IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 187 OF 2006

1. Shri Pandharilal Saichanram Gupta,
2. Shivvishal Pandharilal Gupta,
3. Shri Vedprakash Pandharilal Gupta. ...Applicants

V/s.

The State of Maharashtra. ...Respondent

Shri M.B. Pahane for Applicants.
Shri Y.S. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 20, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned APP for the State.

2. This is a second application for bail. The first application being Criminal Application No.363/2006 was decided by this Court by order dated 13th February, 2006. After the said order was passed, an application was filed in the said Application being Criminal Application No.187/2006 in which it was pointed out that the earlier application was treated as an application for anticipatory bail.

3. On perusal of the said order, in para 2, it is mentioned as follows :- "The applicants apprehended that they are likely to be arrested ....." Similarly, in the last para i.e. paragraph 5, it is mentioned as under :- "Accordingly the application for anticipatory bail is rejected ....."

4. It is submitted that this observation made by this Court is erroneous since the application was for regular bail.

5. Obviously, the order passed by this Court is incorrect as the application which was filed by the applicants was for regular bail. Since an error is committed by this Court, the present application was permitted to be filed and is being considered afresh as a fresh application since the earlier application was wrongly, atleast as can be seen from the order, was treated as an anticipatory bail application.

6. Learned APP pointed out that this Court had considered the earlier application as an application for

bail on merits. Be that as it may. The fact remains that since the earlier application was wrongly treated as an application for anticipatory bail, this application is being considered as a fresh application.

7. Learned Counsel for the applicants strenuously urged that the offence under Section 304B has not been made out and that the ingredients of the said offence are not disclosed in the FIR which is lodged by the father of the deceased. He invited my attention to the said statement. It appears that in the supplementary statement, however, the allegations are made against the applicants that they have demanded dowry. It is submitted that the mother of the deceased also has subsequently made these statements. It is submitted that therefore, these statements are obviously made as an after thought and therefore, prima facie, no case is made out for the offence punishable under Section 304B.

8. It is not possible to accept the said submission of the learned Counsel for the applicants. It is no doubt true that at the initial stage, the complainant

has narrated the sequence of the events one day prior to the death of the deceased and the events which had taken place on the date on which she committed suicide, however, thereafter in the subsequent statement, he and his wife narrated how dowry was demanded from time to time and though assurance was given that after payment of dowry, the deceased would not be ill-treated, the father-in-law, husband and other family members continued to harass the deceased as a result of which she had no option but to commit suicide. The offence under Section 304 B is an offence which is punishable for life. Considering the gravity of the offence, in my view, this is not a fit case for grant of bail, so far as, applicants no.1 and 2 are concerned as there is every possibility that the applicants may tamper with the evidence and threaten the witnesses. However, so far as applicant no.3 is concerned, no witness has taken his name or mentioned that he had at any time assaulted the deceased or had treated her in the cruel and harsh manner. The applicant no.3, in my view, is entitled to be released on bail.

9. Application by applicants no.1 and 2 is rejected. Applicant no.3 is directed to be released on bail in the sum of Rs.5000/- with one or two sureties in the like amount. Applicant no.3 to report to Narpoli Police Station, Bhiwandi, once in a month.

10. Learned APP, on instructions, has stated that though the chargesheet is filed, the charge has not been framed and is likely to be framed within a short period of time. The applicants are granted liberty to apply for bail again if the trial is not over within a period of six months.

11. It is also clarified that applicant no.1 is at liberty to apply for bail on medical grounds, separately, initially before the Sessions Court and if rejected, in this Court.

. With these directions, the application is partly allowed in the above terms.

(V.M. Kanade, J.)